

8-20-2015

## Obama's Failure of Leadership on Gitmo

Lauren Carasik

*Western New England University School of Law, lcarasik@law.wne.edu*

Follow this and additional works at: <http://digitalcommons.law.wne.edu/media>



Part of the [Human Rights Law Commons](#)

---

### Recommended Citation

Lauren Carasik, Obama's Failure of Leadership on Gitmo, ALJAZEERA AMERICA (Aug. 20, 2015), <http://america.aljazeera.com/opinions/2015/8/obamas-failure-of-leadership-on-gitmo.html>

This Editorial is brought to you for free and open access by the Faculty Publications at Digital Commons @ Western New England University School of Law. It has been accepted for inclusion in Media Presence by an authorized administrator of Digital Commons @ Western New England University School of Law. For more information, please contact [pnewcombe@law.wne.edu](mailto:pnewcombe@law.wne.edu).

# Obama's failure of leadership on Gitmo

*DOJ's fight against release of ailing Guantánamo detainee bodes poorly for prison's closure*

August 20, 2015 2:00AM ET

by [Lauren Carasik](#) @LCarasik

On Aug. 14, the Department of Justice (DOJ) blocked the release from the Guantánamo Bay prison of Tariq Ba Odah, a gravely ill detainee who was cleared for transfer by [the Guantánamo Review Task Force](#), which was created by an executive order in 2009. On a hunger strike for the past eight years and kept alive by brutal force-feedings, he now weighs less than 75 pounds and is reportedly near death. Ba Odah, a Yemeni national, has spent nearly a third of his life at the facility but has never been charged with a crime.

The opposition to his release contradicts President Barack Obama's professed determination to close the facility before leaving office. It also calls into question the validity administration's interagency strategy for closing the prison and the argument that Congress is solely responsible for the continued detention of the remaining 116 inmates there, including the 52 who have been cleared for transfer.

The DOJ's objection was filed under seal. The government's lawyers claimed the unprecedented secrecy was warranted because it contains sensitive medical information. But Ba Odah's deteriorating medical condition is public knowledge, and his prolonged hunger strike was intended to draw attention to his [desperate plight](#). It appears instead that the DOJ was maneuvering to [avoid public scrutiny and backlash](#), as it has done in its vehement opposition to the [release of](#) videotapes of force-feedings of former detainee Abu Wa'el Dhiab.

Obama's failure to intervene in favor of Ba Odah's release exposes the interagency [conflicts](#) and the [incoherence](#) that are dogging the administration's

efforts to close the prison. For example, the State Department was in favor of Ba Odah's release, while the Pentagon appears concerned that it would create an [incentive for other inmates](#) to ravage their minds and bodies through self-inflicted starvation. Aside from its appalling insensitivity, the objection to his release to deter other hunger strikers has no legal justification.

His lawyers at the Center for Constitutional Rights initially filed a petition seeking his release in 2006 but withdrew it because he was too ill to participate the proceedings. On June 25, the lawyers sought to [reinstate the petition](#) because of his "severe physical and psychological deterioration." After seeking three extensions to file the government's response, the DOJ opposed the petition.

The Pentagon has been [blocking other transfers](#) that the State Department, the DOJ, the Department of Homeland Security and the Office of the Director of National Intelligence have approved. These include delaying the repatriation of British resident [Shaker Aamer](#), despite a 2013 agreement to transfer him.

The Obama administration intends to submit a proposal to Congress [after the August recess](#) outlining its plan to close the Guantánamo Bay detention facility. The Senate and the House are pressing for [tightened restrictions](#) under the 2016 National Defense Authorization Act that would make it even more difficult for the White House to move detainees. Obama has again threatened to veto any version of the bill that makes transfers even harder. But if his inability to muster the political will to close the facility is any indication, the veto threat may be hollow and his impending plan ill fated. Republican lawmakers will continue to resist any plan that involves bringing detainees to U.S. soil for trial or incarceration — the only way the prison can be closed. And [as critics note](#), merely moving detainees from Guantánamo to the U.S. does not end the travesty and illegality of indefinite detention without trial.

**Obama's failure to act in Ba Odah's case and squash the interagency discord that is hobbling transfers of cleared**

## detainees speaks volumes about his commitment to closing Guantánamo.

Obama has consistently blamed his inability to close Guantánamo on a recalcitrant Congress. But his defense secretaries, who are required to sign off on transfers but are reluctant to do so, and the vexing [inconsistency among agencies](#) tasked with the prison's closure have also hamstrung him. Former Secretary of Defense Chuck Hagel was [pressured to resign](#) in part because of his slow pace in approving transfers. His successor has proved no better. Since taking over in February, Ashton Carter has not presided over any releases that weren't negotiated by his predecessor. According to The Daily Beast, Carter is reportedly dragging his feet for fear that he would be held personally accountable if transferred detainees engaged in terrorism or other criminal activities. Yet Obama has evinced little ability to push his defense heads to fall in line with his closure goals.

Ba Odah's determination to resist his indefinite detention has subjected him to grueling twice-daily force-feedings. "A captive does not possess any realistic means to send his messages to the world other than to strike," [he said in 2013](#), defending his decision. "Freedom should be much more precious for the human being than all the desires on earth. And we should never give it up, regardless of how expensive the price may be."

Deemed noncompliant because of his eight-year hunger strike, [euphemistically called nonreligious fasting](#) by authorities, Ba Odah faces bleak and punitive conditions of isolation. The ordeal has exacted a devastating toll, leading one medical expert to conclude that he appears "on the precipice of death due to severe malnutrition, organ failure and systemic collapse." Since he lacks any body fat, his body is cannibalizing itself.

His petition offers Obama the opportunity to expedite his transfer. This was the case with Ibrahim Othman Ibrahim Idris, who was released on medical grounds in 2013 without opposition from the DOJ. That precedent makes Obama's refusal

to facilitate, not impede, Ba Odah's release all the more frustrating and inexplicable. The administration may fear that supporting his transfer would [constitute a tacit admission](#) that its force-feeding program fails to preserve the health of hunger strikers, but it has cost the White House credibility.

This is no time for Obama to equivocate. "Tariq Ba Odah may die at Guantánamo without ever having been charged with a crime," [Naureen Shah](#), the director of Amnesty International's Security and Human Rights Program, said in a statement on Aug. 14. "If that happens, it will be because the White House was unwilling to step up and make good on President Obama's pledges to close Guantánamo."

It is long past time for the White House to act. If Obama wants to fulfill his oft-repeated pledge to shutter the prison, he needs to exert leadership over his team. His failure to act in Ba Odah's case and squash the interagency discord that is hobbling transfers of cleared detainees speaks volumes about Obama's commitment to closing Guantánamo.

*Lauren Carasik is a clinical professor of law and the director of the international human rights clinic at the Western New England University School of Law.*

*The views expressed in this article are the author's own and do not necessarily reflect Al Jazeera America's editorial policy.*